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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/564,937	04/03/2006	Glenn Stone	CU-4659 RJS	5172

26530 7590 01/09/2008
LADAS & PARRY LLP
224 SOUTH MICHIGAN AVENUE
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CHICAGO, IL 60604

EXAMINER

VO, HIEN XUAN

ART UNIT	PAPER NUMBER
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2863

MAIL DATE	DELIVERY MODE
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01/09/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/564,937

Applicant(s)

STONE, GLENN

Examiner

Hien X. Vo

Art Unit

2863

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 April 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 17-32 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 17-32 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 January 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 05/15/06.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____.

DETAILED ACTION

Information Disclosure Statement

1. The information disclosure statement (IDS) submitted on 05/15/06. The submission is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement is being considered by the examiner.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 17-32 rejected under 35 U.S.C. 102(b) as being anticipated by Comanor et al. (U.S. Patent No. 5,860,917).

4. With respect to claims 17 and 26, Comanor et al. disclose a method and apparatus for predicting therapeutic outcomes including a method of selecting one or more variables for use with a statistical model (see e.g. abstract), the method comprising the steps of: creating a plurality of unique subsets of variables of multivariate data (see e.g. 7, lines 44-55); determining the performance of a discriminant rule when used with each of the subsets (see e.g. col. 7, lines 8-39), the discriminant rule being based on multivariate normal class densities each having substantially diagonal covariance matrices (see e.g. cols. 7-8); and selecting the one or more variables from at

least one of the subsets that result in a desired performance of the discriminant rule (see e.g. col. 6, lines 1-23).

5. With respect to claims 18-2-25, 27-32, Comanor et al. disclose the invention as claimed including the step of creating the plurality of unique subsets comprises the step of identifying a variable in the multivariate data that is not a member of a set of variables, and adding the identified variable to the set (see e.g. col. 13, lines 62-67); determining the performance of the discriminant rule comprises assessing a prediction error rate of the discriminant rule, the prediction error rate is a cross-validated error rate (see e.g. col. 20); the desired performance of the discriminant rule comprises the lowest possible prediction error rate of the discriminant rule (see e.g. col. 19, lines 49-67); the multivariate data comprises gene expression data (see e.g. col. 5, lines 38-67); computer software which, when executed by a computer, enables the computer to carry out the method as claimed (see e.g. col. 14, lines 7-19); a computer storage medium comprising the software as claimed (see e.g. col. 14, lines 38-50); a statistical model for predicting a class of an observation, wherein the model includes one or more variables that have been selected using the method defined in claim (see e.g. abstract).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hien X. Vo whose telephone number is (571) 272-2282. The examiner can normally be reached on M-F (9:00-5:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Barlow can be reached on (571) 272-2269. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Hien Vo
01/04/08



John Barlow
Supervisory Patent Examiner
Technology Center 2800